

Burlington Employees Retirement System  
Board Meeting Minutes  
October 7, 2013

Board Members Present: James Strouse (JS) Jeff Wick (JW)  
Munir Kasti (MK) Matthew Dow (MD)  
Bob Rusten (BR) John Federico (JF)

Others Present: Marina Collins (MC) John Preston (JP)  
Colin McNeil (CM) Kim Sturtevant (KS)

JS: convened meeting at 9 AM.

Agenda – Added a discussion at the beginning of the meeting regarding the Retirement Summit led by Bob Rusten.

BR: As I mentioned at the last meeting, there was a resolution by the City Council that said that after the draft agenda was complete that the draft was going to go out to a number of places, one being the Retirement Board so I am here to seek a general sense, does this make sense, it is going to a number of people and then it is the hope that it will go back to the City Council on the 21<sup>st</sup> for final approval. Right now we are looking at the potential date of November 5<sup>th</sup> for the Summit from 5-8PM, with the goal, the goal is to educate everyone on that status of our retirement system to try to explain the causes of the current situation and implications for our community if those things are not addressed, to convey a sense of immediacy for a long term solution and facilitate community input. The thought at this point was to have registration and some light food provided, a welcome of 5 minutes from the Mayor. Three sort of significant sections of the agenda; one is why is the retirement system important and included in that would be the State Treasurer Beth Pearce coming and having sort of a conversation with Councilor Karen Paul and having a panel that would include our Human Resources Director, our Chief of Police and the 4 unions I believe were being asked if they would like to have a representative on that panel to really talk about why it's important to have a good retirement system. It is my understanding that the Mayor has reached out to at least all 4 unions to let them know about this draft agenda. The next section would be "our system, where we are and how we got here" and another component would be the impact on a variety of people that is not addressed and I've been asked to sort of take the lead on that. One of the City Councilor's approached Jeff about being on the panel; somebody has approached Marina about being on the panel but right now I think it is just myself and Jeff. And again, it is really just to get a sense of where we are and sort of how we got there. Most importantly are if we don't address it the long term issues, what does it mean in terms of the impact on a variety of folks and it dovetails to the conversation why it is

important to have a good retirement system. After that would be a keynote speech from Elizabeth Keller, who was recently on VPR talking about pension system and issues people are addressing. The idea is that people have been trying to come up with ideas to address those problems. The purpose of the summit is to not come up with solutions and to talk about the solutions that are the next step, which is the last part of the summit. Once we have gone through some of the questions and answers from the speakers, we would have closing remarks from the Mayor and Council President Shannon and we will talk about what are we going to do next and hope that a lot of issues will come up and the resolution the Council approved talks about wanting to have a collaborative process that includes representatives from the 4 bargaining units and other people to look at a variety of solutions to address the issues that come out of the summit and that resolution speaks to the fact within two months of the summit there would be another proposal to the council about what that process would be and we would follow the same thing that we are doing now which is a small group get together to come up with a draft plan and bring it to the same folks that we are bringing this to, to get their feedback. This is sort of a general outline of the summit and again, I want to get from everybody; does it make sense, any thoughts and I'd want to particularly hear from you all as to key points that you think would be important to have in session 2. Generally, does this make sense as an outline for an evening presentation?

MK: I'm not sure if the purpose is to open it to all members of the retirement board to speak or just one member, limited to yourself and Jeff? The other issue I need to point out is that by talking to two non-union employees, and just so the administration understands, that these people are not represented by organized people, they don't have organized representation or associations so whatever meetings people have do not bind or represent non-union people. This is quickly a couple of things I noticed.

JF: I am wondering exactly how deep you plan on getting into this discussion of how we got here and who is the most qualified person to lead that discussion? Who has got the most longevity in the retirement system and that can truly discuss all of the things that have taken place over the last 12 years, especially the last 15 probably.

JW: Jim, will you be in town?

JS: No. Actually we were fine up until 2000.

JF: and besides that I am just wondering what the general outline is? Do we have a general outline for these sessions? Do we have an idea of the remarks the keynote speaker is going to present?

BR: Not yet.

JF: Are we going to get a forwarded document of her speech or comments before she comes or are we just going to get what she comes with?

BR: I will ask the question, that is what I am trying to do, I will do that. So there are sort of four things, one of which is a request that all members of the retirement board be included in panel 2. That a clarity that two people, whoever those would be don't represent everybody in the non-

union. There is a question about who would be best to talk about how we got here, who has the most longevity and would be able to talk about that and then a request to have comments from keynote speakers in advance of the presentation and also, fleshing out what is going to be in each section in some more detail. That is what I have heard so far.

MC: I had suggested Buck Consultants to Brian Lowe to present on the panel about where we are and how we got here because they have been the Actuary through and through.

JS: Buck would probably be very good because not only can they address how we got here but they can also address whether they think we have much of a problem.

JW: They are the Actuaries?

JS: Yes.

JW: I have heard it said that the only problem with having the Actuaries in a public forum is that nobody can understand them. They don't speak understandably. I wonder if they are able to speak in plain English. If so, that is a great idea; if not, how will we communicate with them?

JS: He does a pretty good job. I think the only problem is how much they cost.

JW: I seem to recall, in my short tenure here, that Karen Paul shared with me a report from a prior retirement summit, if you will. It wasn't a summit it was a panel and in the report it came up with ten recommendation's which turns out very few of them have been implemented but when was that and do we have a copy of that report, that perhaps Marina, you could recirculate to the group here?

JF: There may have been more than one report. I seem to remember a list greater than ten. I can remember getting together with employee/union groups and we submitted a couple of pages.

JW: Well this particular report, it is evident that a group of folks had done a lot of work with this 25 page report.

MC: I think it is the Retirement Task Force Report and if so I can circulate that.

JW: Yes, and send to the whole board, that will give us all a little bit of perspective, including myself.

JS: Are there other thoughts – anyone?

BR: So, what I will be doing, along with other folks is reaching out to other people and taking it back to the planning committee. All I can guarantee is that I will take back all of the suggestions but can't guarantee what the outcome of that will be and I will let you know what the response is to these suggestions.

JW: Thanks Bob, really nice work here whoever put this together; I think it's a good outline.

JS: And this is going to be a public session, right? Is there any opportunity to phone in and listen?

BR: Oh yes and they are trying to work that out with some sort of a streaming process and they are trying to work out whether there is a way for people to call in with questions. The hope is to make this as broad as possible.

JF: I guess I have a couple of other questions.

BR: Are you asking in the context of the Retirement Board? Because there are people who have reached out to the 4 bargaining units.

JF: I am trying. I am assuming that Brian is my conduit for that (union) piece so I am trying to separate that out now. I think from a Retirement Board standpoint, I am still concerned as a board member about conveying a sense of immediacy about the long term issue. Who has identified the immediacy, who has identified what the long term issue is and who is going to explain that to the public because that is germane to the suggestion of having the Actuary there. So, if the long term issue is GASB and GASB's accounting rules and how that has affected the so called unfunded liability then should they be here to explain it for what it is and what it isn't? I am sort of asking this out loud because you have put this down on paper so I am assuming you have identified that the long term underfunding as the long term issue.

BR: I think we talked about it at the last meeting but the two clear questions are the rather significant increases to the City contribution over the last couple of years and while that is occurring there is also the increase in the unfunded liability. Those are two trends that are not good.

JF: I assume those are inextricably linked.

BR: Not necessarily. If you've increased your contribution you would think that the unfunded liability would start to decrease but the fact that you've been increasing by, you know we are talking about millions of dollars to the City's contribution while at the same time the unfunded liability is increasing, that is not a good trend to be in and so part of it is trying to understand why that's happening and the other component of this is can the City continue to contribute each year significantly higher amounts of money to the system. It means that there is less money for everything else. So I am trying to understand what is really going on and why that's happening and again the intent of the summit is not to come up with solutions, the intent of the summit is to identify what is going on to hopefully then have all the people that need to be at the table to start to figure out what do we do about this.

JF: I see a significant distinction between the question of whether the City can continue to make a certain level of contributions and what the issue is that is causing the rise in those contributions. I am just trying to point out that the summit should probably be more about one than the other. The other in that context is a different discussion but if you are trying to identify what the problems are, how we got here and what the problems are. It's not that the City can continue to do this; it's the problem that the contribution level seems to continue to rise.

JW: I think they are a little bit related because if the City had unlimited cash, it wouldn't be a problem.

JF: Certainly, any costs that continue to rise is a problem for anybody anywhere whether they are business costs or taxes or anything in between.

MK: Bob, actually, a question, related to the summit, does the City have a timeframe for providing the financial information to the Actuary so that we can get the Actuarial report done before December? It is my understanding that you maybe it would be handy to have it in November, especially with the summit, to see that the report is because I would think that the unfunded liability will go down based on the fund carry over 8% and one of the bad year of the previous five years is gone and would be replaced with this acceptable 8+% year.

BR: It is my understanding that I doubt we are going to have the Actuary report by early November. We have been shooting to have it done by the end of November which would be earlier than the last couple of years. So we are trying to get it as quickly as possible but I don't think it will be done by early November and the problem is, there was some discussion about when to hold the summit and the thought is that if you don't do it by early November then you are really talking about having it toward January because of Thanksgiving and the holidays which then pushes back looking at getting people together to start talking about what needs to be done. I think the sense is that we are not sure exactly what needs to be done or what will come out to try to get this going. Obviously whenever a report comes out, that will be whatever the group is looking at long term solutions, in looking at the actuarial report and whether we are in better shape or worse shape. I would expect that we will have, whether it is Buck or somebody else, assisting the group in helping to understand whatever the valuation is.

MK: Now my understanding is that, as of a couple of weeks ago, the payroll information has not been yet provided to Marina. Is there a timeframe for all of this information to be provided to her so that she can send it to the Actuary?

BR: The way I would answer your question is there are significant issues that we are still trying to address and clean up fiscal year 13 and so one of these situations that we are trying to clean up is a priority, along with the Audit and so I know there are some people who are working with others to get the information to Marina. Hopefully we will have it sooner rather than later and I can't honestly tell you when that will be. There are a couple of timetables, I would actually like a budget done much earlier than this past year and so my conversation with Buck is wanting to get it (valuation report) by the end of November. The timetable is to get this information as soon as possible because I would like to have it as quickly as possible but we are also trying to work on getting things ready for the audit. What I keep saying to folks is that I have only been here for a couple of months and this is not going to happen again, including getting the budget done in a timely fashion.

JS: Any comments, final questions?

JF: Just one final thing. Who, ultimately, is setting the agenda for session two, is it you?

BR: It will be Council, who ultimately approves the whole program. It won't be me, I will be

taking other peoples comments back to the planning committee and other people may have other suggestions and it will be the planning group will ultimately decide what they want to present to Council. I am a member of the planning committee and then it will be Council that will make that decision. We are shooting for the 21<sup>st</sup> so that we can publicize it.

JS: re-convene the hearing of September 26<sup>th</sup>; it is now October 7<sup>th</sup> @ 9:00am. Same people are here present with the exception of board members Hooper and O'Brien and add council Kim Sturtevant. Mr. Preston I would just remind you that 1. We are still recording and 2. Still under oath and that you do have the ability to be represented by council.

JP: Yes

JS: Do you have things that you would like to present to us further?

JP: I do not know if you got what I sent. I sent you the form-15 and I guess what my question is do you want something further?

JS: I will try to put it in laymen's terms if you will, it seems to me that when we are looking to see if in back 2009 you were totally and permanently disabled we are looking at it differently than the way you seem to be looking at it. When we are looking at it under the ordinance basically, were you able to do anything to be gainfully employed earning a reasonable income back then, not could you be a fireman, we know that you could not. You absolutely could not be a fireman, but could you do anything? Were you employable? Could you have earned a living?

JP: Well, because I was in school, no

JS: but could you have, not were you earning a living it's were you by reason of your education and training and abilities able to do anything?

JP: I was able to do some things, yeah, sure

JS: And I think that really is the nub of what we are trying to get at because we have to first decide, were you totally and completely disabled or could you have done something? If we find ok you couldn't do anything that sets us on one track and if we find that, he could have worked and could earned, whatever that puts us on a different track. That is the first thing we need to figure out.

JP: This is how I see it. Here is a little bit of what I have to ask, first, in order to be consistent with the court's ruling and the ordinance you know, when actually I don't remember the exact date did you actually revoke my benefits, when did that actually happen? That was September of 2010 or something?

BR: I believe what we heard last time in July of 2009, Laurie made the decision to suspend the benefits but they were actually ended in July of 2010.

JF: That is correct

JP: I think I got a letter or a notice or something. So the court's ruling says that I was on disability at the time and because I sent that letter to ask for reinstatement or saying that I wouldn't default they should have turned it back on so at least until... I am trying to go on steps here. You're saying that you need to make a determination, and I am saying not until 9/2010, so during that time at least, because of the ruling I should be paid for that. So that is what I was wondering. So that would be June 2009 through August 2010 and I got paid. Average weekly wages + the 12% and that is from the court.

JS: My notes say you were paid through June of 2009, and then it stopped

JP: The judge said, and he quoted the ordinance it shouldn't have stopped. So let's fix that first and that is what I am saying. Then that will free up money so that I can get a lawyer because I cannot afford one right now and the reason why I do not have one with me is because I cannot afford one. So if we start with that I think that is reasonable and the rest of it we can, hopefully I can have a lawyer to represent me for the rest. I brought all my medical stuff I don't have any misgivings or worries about giving you that stuff it explains, there is also a vocational rehab to address what I could and could not do, so it is not a simple answer to say that I could work, I had to follow this plan and they found the fastest way for me to get into employment was to follow this plan, so I would really like for the lawyer to put this evidence, I will try to represent myself as much as I can but under the circumstances you guys basically caused me to have no money all this time. So I can't afford a lawyer. Like I said if that first part of it was done and we can get through that, along with the increase with the number of years of service then I can go pay for a lawyer to come back and represent me. I think that is fair. I am actually moving the board to do that.

JS: Can you explain that further? Tell me exactly what your suggestion is?

JP: That you actually, well I was hoping that the board would pay me for the benefit that I had, from the time, 2009 till you revoked it, that you say in your letter that was back in August 2010. There is no question about that.

JF: This board made a decision on July 29<sup>th</sup>, 2010 the department will revoke Mr. Preston's benefits. I believe that would have gone into effect immediately but it he was already not receiving a benefit at that time. It was already temporarily suspended as of July 1<sup>st</sup>, 2009.

JP: The court ruled that as soon as I withdrew my willingness not to comply and I said that I was going to comply that my benefits should be reinstated is says that in the ordinance too. I don't see any dispute in that at all. I can read the ordinance to you; I know you guys know it. So I was hoping to get that money plus the 12% interest up until 2010 based on my avg. weekly salary that will free up money not only to live but to also afford a lawyer, help reserve the rest of my benefits. Is that fair?

JS: Well, even before we could do that, you went out on disability in December '06, the ordinance provides that if for 2 years if you can't be a firefighter you are on disability. At the end of those 2 years we need to determine are you totally and permanently disabled or not. If we came to the conclusion that you were not totally and permanently disabled than we need to determine how much, did you or could you have earned subsequent to that and so those

determinations have not been made. So even if we wanted to agree with your proposal we still don't know how much that would be.

JP: Wouldn't know how much that would be? I was getting paid \$2900.00 per month

JS: We know what it was but at that point after 2 years...

JP: Your missing my point, in your letter here you revoked it in 2010 at that point you were trying to make a decision, that is what I am trying to say I was on it, I should have been on it. As soon as I withdrew my----- or I said I cancelled the appointment or whatever, and I said that I would comply with the board and made the appointment. From that point on I made attempts all the way through. You can't penalize me for it taking until summer of 2010. I was in training I was trying to do it according to the court they found that I was trying to comply. So we can't argue that, you are not going to argue that again? In March when I went to the FCE until July, August and the board was trying to decide what to do. It took that long, I didn't do that. I am just asking for that pay during that time with interest and I am entitled to it. If we can get through that than I can get a lawyer and come back we can get through the rest of it. That is what my proposal is. I think that it is reasonable.

MK: Just so that I can understand, The way I am looking at it is, after 2 years we have to determine if he is permanently totally disabled or not.

JS: That is correct

JP: I am entitled to a hearing to present evidence and you guys wouldn't allow it

JW: That is what this is.

JP: You can't say all of a sudden today we are going back to 2010

JW: That is what the court told us we have to do, remand, that is what remand means. We are trying to help you, I am trying to help you I can tell you that.

JF: John do you have any paperwork from the Dr. from anywhere after January 2009, which says that you could not hold a job or work?

JP: After Jan 2009?

JF: Correct.

JP: I have, do I have paperwork that says? I am still injured, yes.

JF: Do you have any medical report from a Dr. that says you can't work, not that you were injured not that you have a permanency from some part of your body that was permanently disabled partially or whatever, but whatever you had for a disability prevented you from being able to work.

JP: from 2010? I have

JF: No, no, no see were, I am fairly new to this but hopefully the lawyers will jump in here, we are afforded a benefit as Class A employees through the retirement system so if we have some injury that prevents us from being a police officers or firefighters than we are entitled to disability benefits for 2 years for an injury that simply prevents us from being police officers or firefighters. Not that prevents us from being airline pilots or any number of things other than police officers or firefighters, but after that 2 years we have to meet a different definition to continue to get a disability benefit we have to be completely getting like a social security check, it is different because we do not get social security but we have to meet that definition so do you have any paperwork from the Dr. that says that you are completely and totally permanently disabled, couldn't hold a job after January 2009?

JP: I don't...I don't know, I have a lot of medical stuff, I would have to go through it all.

JF: You were in a retraining program starting around that time, and you were getting retrained to work in a different field. Is that correct?

JP: Yes

JF: You were working with a number of entities to go through occupational therapy or training or school, to get that new career, correct?

JP: I was calling voc-rehab and workers comp and whatever that is I have to say I am not comfortable with all this because I am not sure what your definition and the definition of the court, I am not a lawyer but what I am saying is because of what the court said like you're going ahead again, because of what the court said in 2009-2010, from what the ordinance said, I was still on that 2 year temporary disability payments and basically the court is saying and the ordinance says it too when I sent that letter that said I would comply, that it should have been reinstated. So once that is fixed the rest of it like I said I don't mind answering all those questions but I really would be more comfortable with a lawyer, I don't really fully understand what you are telling me, I know what you are saying, were you working? Were you able to work? This is not my thing it is whatever is written here and whatever is determined to be, whatever it is, it is. I am not qualified to answer that question unless I was to go through all the paperwork here. Unless you want all the paperwork you can go through it all.

JS: Can I shift gears for a little bit. Can you tell me about the voc-rehab process? What my recollection is that you started off in the direction as an engineer and then it switched to pilot training can you give me a time frame on those things.

JP: During the time I was disabled and not working at all, waiting to go back, waiting for a ruling to see if I could go back to school, that was 2005-2007 or 2008, when I was finally able to go back to VT, to go back to school... again we are getting into... like we are not addressing this motion to pay me for that time, and I have not heard an answer.

BR: I am going to actually ask the attorneys what I think is the hub of this question which is the court decision and the issue about remand. Sounds like 2 different opinions are out there, 1. The

court has essentially said for the board to go back and determine how much money we owe Mr. Preston and determine when his credit starts 2. Restart the process again in terms of making a determination as to whether Mr. Preston at that time was totally disabled. Those are 2 very different opinions. I look to the attorneys and say, what is your understanding as to what the court is asking or said that we are supposed to do.

CM: I am not here to represent the Board but I am here on behalf of the City to make sure the board has all the information that is needed. We have reviewed the court decision and our interpretation is that essentially what it boiled down to is the court reversing the board's determination to permanently revoke Mr. Preston's benefit because they felt that that determination was not reasonable, and remanded it back to the board consistent of that determination. That leaves the board in the position to make both of the determinations, I believe that you have just outlined.

BR: The court has said you can decide here, now with this hearing that Mr. Preston was not totally permanently disabled in July of 2009, therefore based on that we can make that decision or we can make the decision that he in fact was and then decide how much money we should give him.

CM: My understanding is that they gave no direction with that added, they gave direction that the board had revoked Mr. Preston's benefit because at the time the board had determined that Mr. Preston was not cooperating with the board's request, there is a section of the ordinance that says if you are not cooperating for over a year, and not providing the necessary information for over a year then we can permanently terminate your benefit. The board never made the determination of whether or not Mr. Preston was totally and permanently disabled.

BR: So we can make that determination now based on the court's decision

CM: Yes.

KM: That is consistent with my interpretation as well.

JP: That is where I disagree and where I would need a lawyer to ask. It is open to me to go back to the court and maybe we can get a clarification, I have never gotten a jury trial and it could go to a jury, it's open to that as far as I understand it. I think at this point request a continuance. If you don't want to address the questions I have than I am going to get a lawyer and go to court. I wanted to at least get that first part, then I could afford to get a lawyer to try to get through this process, if that can't happen I would like to make a request for a continuance, till we actually go to the court. I don't want to do that believe me it's because I feel like I am forced to. I am trying to protect my own and what I believe the court said and my own interest and it is nothing against you guys. Seems to be a little bit of a disagreement there and like I said I couldn't even get lawyers that I talked to, agree on it, it is a matter that has to go to court.

JW: One thing we could do, in my opinion, this is not my legal opinion I am not the board's lawyer my opinion as a board member is, and I want to sympathize with your situation you want a lawyer but they wouldn't take you on without cash on the barrel head we have the right and I would suggest the duty as a board to make a decision after hearing on this matter. Once we have

made our decision I think that it is an appealable decision perhaps, by Mr. Preston, if you get our decision and you don't like it, that is the trigger that allows you to take it to court. I am thinking what theory we take it to court now if we just stop other than, hey judge help us out here we have an internal disagreement at our hearing here. That is not really a basis for taking it to superior court. You could and maybe the judge will give you a little guidance and send you back but he is going to say guys this is remand. I am inclined to make a decision and frankly the reason we can't just make a decision here, my personal opinion is, because we are in a public hearing so I am not going to state any numbers we could go to a private hearing, executive session but it is clear from the documents that you have submitted Mr. Preston that you generated income, earned income I will call it your training activities because I don't know enough about how you become a pilot, but your employment as a pilot in training. There is enough income that if added to the 75% that the city was hypothetically supposed to give you during this period it's too much. We have to cut it back under the ordinance so we can't---

JP: I don't even necessarily agree with the ordinance. I don't necessarily believe that, ok the first 2 years, I think...

JW: There are a couple places in this particular ordinance where it says that it wouldn't be fair for you to generate 75% of your earned income as a firefighter plus an amount as a pilot in training that would be more than 100%.

JP: The time period that I am talking about, I wasn't earning income until the end of 2010.

JW: No, your 2009 income tax return, I am not going to say the number but it has substantial income.

JP: Yea, 2009?

JW: Why don't we look at it right now it is right here?

JP: The only money I received was from the City of Burlington.

JW: Then maybe I don't have the right information, look here, wages and salary.

JP: That is from the City of Burlington, I have the transcript and I can show you.

JW: Ok fair enough, it says Professional Pilot so based on what you gave us; wages and salaries, maybe shouldn't have been on line 7.

JP: It comes out on the W-2 and it tells you where to put it.

JW: Ok fair enough, I would like to sort out the 2009 income in fact do you have, we need to sort this out to figure out whether or not you earned a total of more than...

JP: I don't mind, part of this period that I am talking about, deduct what I made...

JW: With all due respect, in the information you have given us, I don't have the information that

gives, of this certain sum on your 2009, 1040, line 7, what portion of that is from professional pilot which is what you stated as your occupation, and what portion is City of Burlington disability payments, do you have that? We can't come up with an amount to even pay you for 2009, 2010 until we can run that math. I suggest we do that right now and get it done and if you don't like that result than I think with an open mind we need to consider how to move forward or what.

JP: I am not comfortable with this, until I have my lawyer

JW: Let me ask our attorneys, I have a lot of sympathy for Mr. Preston, coming here , money is at stake, but on the other hand, how are we supposed to proceed if every time we get together and I take time off from work and you just come an you say I don't have a lawyer sorry.

JP: I hope you don't think that I don't want to get through this, I really am.

JW: We got to get through it; we can't keep continuing it if you are not willing to go with us on anything here the board has the right to decide. I am trying to go with a collaborative manner here.

JP: But I have to protect my interest and I have to move the board to stay

JW: Until when? Until when?

JP: Until I get a lawyer and go to court

MK: I thought at the previous meeting we had, my understanding was you have a lawyer

JP: I have a lawyer and I went to talk to the lawyer and unfortunately they want money, we are in the United States of America I was trying to talk to him to get him to take it like a contingency they want a retainer they want cash up front.

JW: Is it crazy for me to suggest to the city and city attorneys you tell me, this is totally nuts and maybe I am being too sympathetic here but, Is there any theory where we are going to find that he is entitled to zero and if that is the case than what I am about to say is crazy but seems to me that at some place this is going to change hands here would it sense partial settlement agreement where we can give him an advance so we can give it right over to his lawyer so the next time we get together so we don't have to hear this again with all due respect so that we can decide the damn thing?

MK: My issue Jeff is like you said the potential exchange of money the longer we delay it that means that our rate and the entire employee retirement fund would be impacted by the interest.

JW: I would suggest that you would agree that beginning today the 12% clock stops ticking, in this hypothetical settlement agreement for \$5- \$10,000 that we send your way that's an advance that is against anything.

JP: That takes away the incentive to get a settlement.

JW: You're the one that is delaying this procedure. I have been diligently showing up we have set a date for a hearing.

JP: I don't have any money to be doing this.

BR: We are missing the first fundamental question. What we potentially could owe is based on whether or not Mr. Preston is permanently and totally disabled or not and it seems to me that we need to address that issue and make a decision on that and then we can have a conversation about what we think is owed based on that decision. I am uncomfortable with a partial settlement if we want to have a conversation about coming to a settlement about this case that's one thing, but I am uncomfortable with the idea and I think we are circumventing the process the court says we should be doing. So our first question is after 2 years was Mr. Preston totally permanently disabled or not?

JF: I would like to reflect that I believe that to be the case in my opinion the board needs to decide whether or not you were totally and permanently disabled after that 2 year period when you couldn't be a firefighter. When they make that decision it will help the dominoes fall in to place in terms of where we go, in terms of what salary we need to figure out your entitled to between the time you stopped, the part after the 2 years can be adjusted to the up to June of 2009, that will of course help to determine the service credit years and what is included and what is not. When you turn 55 those previous numbers will determine the numbers that go into the formula for your permanent retirement when you turn 55. Any documents that you have that show what you did and didn't get paid for between January of 2009 until you turn 55 and any documents that you have should you still be pressing the idea that you are permanently and totally disabled and unable to work after January of 2009 we would need to have from you today because it is going to be my contention that, while I am not trying to hindsight the board back then but we need to make this decision and help you move on and as Mr. Wick said I assume that at the point you would have the opportunity to challenge the decision and you certainly would have the means after that.

JP: Before you do that I'm putting in this request to stay that says: I do hereby request this stay that the proceedings of this retirement board hearing on October 7<sup>th</sup> this matter should be settled in a jury trial in a fair an unbiased manner because we can't come to an agreement on how to proceed and that it is an interpretation as to what the court said and I don't agree with it.

JW: I deny it. Others can speak. This is not the time for you to say that this isn't the legal forum to settle this matter a spirit or jury trial is. The legal forum to settle this matter is right here, you can appeal the decision if you do not like it.

JP: I disagree with you. I am saying that I am trying to stop the proceedings because I don't think you have the authority to do that. I think the court, I may be wrong, but we have to go find out.

JW: We have to move forward and decide this and partly to help yourself, because you don't want to keep fighting this.

JP: The track record is not there for you to help me.

JW: What isn't there?

JP: I haven't had help from you in the 5 years, 6 years, 7 years...

JW: Well that's what I am here for.

JP: I wish I could trust you.

JW: You don't have to trust us or not we are the tribunal that has a legal duty. You think I want to do this, No.

JP: I don't mean that you guys are bad people. I am just saying we never seem to be able to move forward.

JW: We are moving forward.

KS: I don't know if the board wants to go into executive session but my first flush right now is this is before this panel, there is no other court or jurisdiction that has this before it. We are the only jurisdiction so it cannot go out before a jury trial is before this panel makes a decision.

JP: You have the right to deny my request for a stay but I want it on the record and I am going to tell the judge that too.

KS: But Mr. Preston, I am not aware of there is any other proceeding related to this in any other panel right now, is that correct?

CM: No, not that I am aware of

JP: Again, I am not a lawyer I am just trying to preserve my right

KS: I am just asking if there is any other jurisdiction or any other place to either you or Mr. McNeil to tell me that there is something else going on with this case besides what is right before us right now.

JP: Here is the thing I asked for a continuous to see the lawyer, let's move it back to where we are now

KS: But if I clarify you asked for a continuous not to go see a lawyer because you had a lawyer and you gave me his name and I emailed him. It was Friday afternoon when I got the email back that said I am not representing him now.

JP: I called a guy prior to last hearing and we talked on the phone quite lengthy about it but it is a very complicated case, he would need time to read so I asked for a continuous given that time. The next day after the hearing I took another day off from work I met with him all morning and another attorney, we made a lot of headway, and I think they agree with me in a lot of ways. But when it comes to bringing the attorney here they wanted money and you guys have tied my

hands with that. So I came here again to tell you that, I wish I had a an attorney, I want an attorney, I can't afford an attorney, if you could release some money I could get one, and I thought that was a reasonable proposal to pay that first section so that we can move on from there but if it isn't it isn't and so that is why I prepared this. I think I am being reasonable.

JS: Since you are not represented by council and you want to be represented by council you don't need to continue in this hearing but we can continue after you leave that way if we can come to some conclusions we can come to some conclusions.

JW: I don't think this is a criminal trial. All these extra rights because of taken away from freedom applies here. He has had opportunity to have council. I don't think outside of the criminal context that you can't afford council is taking away from some kind of due process here. I need more information from him so that we can make a decision here. Because if the 2009 income tax is in fact City income and not pilot income my analysis is wrong so I want to make my analysis right. I think we are going to make this decision without him but I would like to get some input from him, factual input.

JP: When we were back in the hearing stage when they said I had the opportunity to present evidence what I would like is to have an attorney present it for me so I don't make a mistake.

JS: I think we are at a point that we need to make a decision and you have the right to appeal, after we do.

JW: That's right, and you do, you have the right to appeal our decision and if you don't like our decision we are right back in court.

JP: That may be.

JS: So do you have sufficient information?

JW: We do.

CM: My understanding at this point is that the board is not welcoming Mr. Preston's request to stay and wants to make a determination, based on the hearing today.

JW: We are welcoming his presence here.

CM: You are welcoming his presence here and I am recommending that if Mr. Preston would like to present anything with that understanding he would be open to do so.

JP: What would you like me to present? In terms of what?

JW: I have a couple questions that will factually assist me, without saying any numbers in 2010; I have an income tax return that shows something on Line 7- Is any of this from the City of Burlington? And maybe Marina you could help us out with facts as well.

JS: No he was only paid through June of 2009.

JP: That came from the supplement of my training.

JW: So this was not Burlington disability income.

JW: In 2011, did this come from the City? Where did this come from?

JS: No City of Burlington income going forward.

JW: We are recording this. I would like it on record that there is no dispute where this income is coming from.

JW: How about this in 2012?

JP: Same thing.

JW: That's airline income?

JP: Yes.

BR: I guess what I would ask is, because the benefit will be different based on the whether the determination of the board is totally, permanent or not. And if I understand the language correctly not only if it's not totally permanent it is not only what he earned but what was earnable which is another question it would seem to me that the first decision we should first decide is was he or was he not permanently, totally disabled and then the question to me is are we saying that we are still open to hear any information on that or after today or are we ready to make that decision.

JW: So this is our bite of the apple I would say. If you would like to have more information on question 1, have at it. We are going to make the decision on questions 1, 2, 3, and 4 just like any tribunal and judges would. After the hearing is closed we deliberate why don't we think guys about question 1, yea or nay, and then based on that we better have the facts to make a decision. This is our one bite of the apple unless we really want to continue again and I don't. I don't think it is fair to him or us.

JF: Do we make the determination of someone's permanent disability in open session or executive session? With or without the person with the board at the time?

KS: You are a quasi-judicial board so you can make a determination in deliberation in other words, behind closed doors.

JW: The opinion will be written up right? We are going to have a written opinion, written by someone here, and that gets disseminated to Mr. Preston and to each of us. Is it a private document or a public document?

KS: The decision is a public document

JW: But it comes up with some calculations that one could get into his personal, medical and financial information.

JP: Here is why the medical determination is so hard. I am not a lawyer, again, and it's crazy for me to speak, I think I have evidence that I was totally and permanently disabled.

JW: Even while you were a pilot?

JP: Yes, you guys are only concerned about my back.

JW: No, You have to look at the definition of the statute of what it means. The standard...

JP: The only evidence before you is, I gave you was this permanency thing from workers comp which is for my back, low back injury.

JW: The evidence before us actually says you got a copy of it, there are 2 Odessa exams at different points of time, and each one says, "The dude is actually is able to work as a pilot in training."

JP: The only job I could possibly do, based on there is a lot of reasons for it, it is partly adrenaline, you're not sitting for long periods, you're not standing for long periods, you're able to move around a little, and I think the adrenaline thing is the main reason why I can do it. I don't think I would be able to do another job.

JW: Could you have sold insurance? Life insurance?

JP: I doubt it.

JW: Hypothetically why couldn't you have sold life insurance, or a financial advisor in training? Those are pretty sedentary jobs you're an intelligent guy.

JP: They would have to be part time. I don't know if I could actually generate a living part time and I think that is what would end up happening. I can't sit or stand for long periods of time. The schedule is rotating, I am working for a few days and then I am off, I am waiting for a flight. There is just something about it. It works. Every year and every 6 months I am in jeopardy because there could be a point where I can't do it anymore physically. I could go to a training event and not be able to pass, it is very risky, and without any type of benefit I am screwed because my situation has gotten worse not better. I don't think I have longevity in this job. So that is what scares me about this whole thing. I have been trying to do something. I am not the type of person to just sit around; I would be dead right now.

KS: Mr. Preston you said you have been through trainings and have passed the trainings. I mean you have been doing it now since 2000...

JP: The training never stops.

KS: Right but you have passed, you have gone through your pilot exams, and you have gone

through your pilot physicals, and you passed through all those because you are now a Pilot.

JP: Part of this you guys don't understand it would take me weeks to explain because that is what it takes it is very complicated the training is ongoing and so is the medical thing. It is always jeopardy training you could lose your job you have a pc or you have a standardized check, when someone rides in the cockpit with us and at any minute, if I can't physically do the job they will see that, and I am afraid of that. I don't want to say on record. I am walking that fine line. This job, I can tell you for a fact is in jeopardy and it gets more and more so. My fear is that I gone all this time for nothing, just like I went to engineering school and it ended up being for nothing. But if I can talk about some of my injuries it may help you understand why I am saying this because it almost sounds ridiculous at first glance, you are not permanently and totally disabled you can do something, but not at this point I think I would retire at this point, here we are, we are here today for what happened in the past, we are not in 2009 we are here now in 2013. I say that is ludicrous.

JS: Do you need any more information before I close the hearing and we can begin deliberation.

CM: Here is some material on behalf of the city. What we are presenting here is Mr. Preston's last paychecks, so you have a general idea of what he was making at the time before he became disabled you will also have some correspondence from the retirement board awarding him the benefits and outlining what is benefit was, and other information from essentially the board outlining the requirements of what it takes to be on disability retirement and the materials that were sent to Mr. Preston as they are sent to any beneficiary. And lastly a document that is dated February 6, 2009 which is the letter that began the inquiry back in 2009 to learn his disability status and I think it is information that is relevant to have.

JS: Mr. Preston do you have anything else you would like to give us before we close the hearing and begin deliberation?

JP: Yes here are my 2013 pay check stubs that will help you for 2013.

CM: From the City's point of view, Mr. Preston I guess I would ask, we have referenced tax transcripts a bunch of times during this process, is that something you have for the board?

JP: Yes, Here is my...

BR: Request to go into executive session before we close the hearing

JW: second that

Vote 6:0

Executive session- 9:45

Regular session reconvened- 10am

JS: Do you have anything you want to submit to the board before we conclude the hearing with the understanding that after we conclude the hearing we are going into deliberative session and probably come to conclusions.

JP: I would like to submit some medical stuff, I would like to also, if I knew you were going to do this, like I was hoping for a lawyer to represent me, I think that the lawyer would advise me to go to an appointment now and find out my medical condition, I think that might help, because your saying after 2009. But I can't do that if you are going to rule today. I don't think it is fair I should be able to go to a Dr. now and get a report and submit it. But we are only talking about reports back from yesteryear.

JS: That's correct.

JP: Again I am asking if I can do that, I don't want to continue, knowing I could get more evidence to support my situation. I hope that is on...

JS: Yes it is.

BR: I guess I am looking to our Attorney and City Attorney that with the information requested and have already been made including the continuance to today with the understanding that there are 4 areas to resolve. The first one being, permanent and totally disabled vs. not, Do you feel think that the board has made the appropriate level of inquiry to get information they need.

CM: From the City's point of view, the request has been made for Mr. Preston, to provide the information with the understanding that these are the determinations that must be made by the board. The hearing was continued to today based on Mr. Preston's representation that an attorney would be here today and unfortunately an attorney is not here today but from the City's point of view I am having a difficult time imagining what other information could be provided to Mr. Preston, to give him essentially a heads up that this is the information that the board would be seeking and asking him for at the hearing. I think the board has afforded Mr. Preston every opportunity to provide the information.

JP: I disagree because this was only one week ago. I came here one week ago assuming that I was going to be paid.

JW: Colin's letter went out to you August 15<sup>th</sup>, which is entirely consistent with what we've been working on the last few weeks with you at the hearings.

JP: I went to one attorney prior to this last one and he kept the file for about a month and then he said he wouldn't help me because it was too complicated and it was going to end up back in court. Any ways here is Dr. Bucksbaum's report he actually summarizes just almost every Dr. that I saw that I saw all the way up to 2009 and there is things in here that talk about medical end and permanency of my back no one has ever done an evaluation of my whole body. Can we turn that that off?

Motion-JS

Move-JW

Seconded-JF

Vote 6:0

Executive session: 10:02am

Regular Session reconvene: 10:16am

JW: I just don't think we can do anything but follow the law, and the law says you do not receive creditable service during the 5 year period you are in training or rehab so all this medical stuff is irrelevant to that question.

JP: That is what I was saying at least pay me up to the 2010 when you guys revoked it and at that point than we should discuss it, I think there is no discussion. I was on whatever that 2 year disability was and I was taken off in August of 2010 by your own admission by what it says in the court's ruling. All I am saying is then pay me that. There really is no question about that.

JW: Correct. It is how much, it's whether or not we have a duty in the statute to cut it back if you earn more than 100%.

JP: That's a good question, I don't know, I think it could go either way. Of course if we went back to court I would ask for the whole thing.

JW: You can ask for the moon but you can only get the statute.

JP: Yea, I don't know.

BR: I think where we are at is either 1 of 2 things, which is, you would be making a decision on everything, or if you were looking for a settlement than a settlement on everything. I don't think where we are at is a partial resolution we are ready to look at resolving all and then that will forward you based on the decision we make, to decide what your response is to that. Speaking for myself I am not looking for a partial...

JP: Well that may be an idea is to make a proposal first, and then if it is reasonable, maybe we are talking about the same darn thing. I should be accredited for that, at least that time. I have an argument to be credited for years of service you offered it to me last year for 20 years, as a settlement.

JW: How come you didn't take it?

JP: Because I thought I was accruing it any way and I would get it in court. You offered it to me before and now you are not offering it to me.

KS: I believe that was a settlement offer potentially that really isn't properly before.

CM: That would be correct.

KS: Ok.

JW: The point is whatever is offered generically speaking in a settlement is a settlement in a dispute in a litigation level. Were now at a point where we are in remand and we have to follow the law.

JP: But don't ignore the court's ruling.

JW: No I agree I am trying to go with the letter of the law here.

JP: And I think we are going away from that.

MK: With the information provided to us by Mr. Preston during executive sessions, do we need any other information? Or is there any other information that Mr. Preston would like to provide to us? Before we can move and answer the questions.

JW: Is there anything else Mr. Preston that you wanted to say to the board before we close the hearing and make our decision?

JP: I don't know, I would like to say that I would like an attorney before you do that, because there may very well be evidence here and I would also like to go to see a Dr. again had I known that you were going to do this.

JS: We are going to conclude the hearing and we are going to deliberate, if new information becomes available or if the board finds it needs more information to make a decision than we can reopen the proceeding.

JW: Until we make our decision, once we have decided that is it.

CM: One open request to Mr. Preston, we have talked about medical records and we have talked about transcripts. If you would like to submit those...

JP: I think I did, didn't I, well here are the transcripts

KS: All you have submitted so far in this session I believe is the 2013 paystubs so if there is any other additional information you would like to submit please do so.

JP: This is just what the IRS gave me, so you want to know that I didn't make that up, right?

KS: Any additional information to verify your income, I think is welcomed by the board

Preston exhibit #1 is the 2013 paystubs

Preston exhibit #2 is the transcripts

JP: You said you wanted paycheck stubs from way back? I didn't keep all of them, but I have them.

JS: Does anyone have any problems with the tax returns as submitted to us, if there is none than I don't see the reason why we would need them.

JW: It is completely up to you though; give us what you want us to consider we will consider sincerely everything you give us.

Preston exhibit #3 is letter from Public Airways Holdings dated 9/23/2013

CM: Mr. Preston just to clarify, I think the board would entertain any medical information that you have that you are willing to provide them and sincerely look at.

BR: However do we want to specify a timeframe...

JW: No, it is right now.

JP: But I can't get a report of what my condition is today, that's the problem.

JW: It is not clear to me that that information is relevant is there any question at hand?

JP: Well it goes to whether or not I am totally and permanently...

JF: It is not clear to me as you ask that question that it is relevant because as I understand it we have to decide, from 2009 if you were totally and permanently disabled not whether you are totally and permanently disabled today.

CM: The question really is, from my point of view and the city, is really from 2009 when you took your review after your two years were up to the time he was eligible for full retirement.

JP: But see you could have called me in every year and the Dr. could have determined at some point I am. This is what I am saying we are just taking a snap shot of 2009.

CM: I think the board would be willing to take anything from, and has anything from, prior to 2009 or up until your retirement; I think it could potentially be relevant to this board.

KS: Any physicals that you may have had with the airlines, etc. you know anything like that you would want to submit relevant to that, FAA physicals to fly as a pilot.

JP: What I am speaking about is the longevity of what I am facing, you know? And the prognoses and I think that it is important for you guys to determine my potential for earnings and all that.

JS: That would be irrelevant because as of 55 you are just getting your regular retirement, going forward and health and anything else doesn't matter at that point.

JP: that is a good point, ok

Preston Exhibit 4 is wage income transcript from IRS dated Dec. 2010

Preston Exhibit 5 is a Report from Dr. Mark Bucksbaum

Preston Exhibit 6 is a medical record from FAHC, 1987-April 2004

JP: Two things that I meant to mention in executive session and I don't mind saying them, that I have chronic Achilles tendonitis I never mentioned that and maybe fixable by surgery, but I opted not to, but I do physical therapy and stretches to this day, I still have flare ups and because

it is a workers comp thing they don't treat it. I was in NY recently and I was trying to get medical care, they wouldn't see me because it is a workers' comp claim. I have chronic bronchitis which I don't remember if I mentioned that. I am not sure if that is in the records that I gave you, I just wanted to make sure...

JS: Ok, anything further?

JP: People don't put up with sick time anymore, being out sick, alright I think that is it, if you don't want the paycheck stubs...

CM: If you want to provide pay stubs I am sure the board will entertain them

JP: No that is ok, it says it

JS: Entertain a motion to conclude the hearing

JW moved to conclude hearing

BR to 2<sup>nd</sup> the motion

6:0

JS: Hearing is concluded, we will now deliberate on the facts as submitted.

BR: In the deliberation session are we asking City Attorney and Marina to stay for the deliberation session?

BR: Move to go into executive session and to include our Attorney, City Attorney and Marina Collins

JF: 2<sup>nd</sup> the motion

In favor 6:0

Executive session start- 10:30am

Executive session end- 10:35am

JW: We have decided that it is not appropriate to have City Attorney and Marina here in executive session because we are the board and they are not. They represent the City and they may be an adversary to Mr. Preston and therefore we want a pure deliberation without them and we didn't discuss anything but that in executive session because we realized the potential error with that said we will go back into executive session without Marina Collins and Colin McNeil.

JW: I move to go back to into executive session

JF 2<sup>nd</sup> the motion,

All in favor 6:0